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ABSTRACT

An overview of the constitutionality of various state public education finance systems is presented. Issues addressed include education as a fundamental right mandated by the education clause of state constitutions and the impact of the equal protection clause on the education clause. Criteria for successful challenges to state school finance systems are identified, as follows: (1) state court declaration of education as a fundamental right; (2) education clause requirement of qualitative demands and affirmative duty by a state legislature; (3) use of the "strict scrutiny" level of analysis; and (4) verdict of a district or state finance school system as inequitable. Two tables list 14 constitutional and 12 unconstitutional state finance systems. Also included are a summary of regional agenda, a guest commentary on the Illinois finance equity system, and 10 viewpoints by regional state legislators on pros and cons of current funding structures. (11 references) (LMI)

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Policy Briefs

Number 6 & 7; 1990 • *Special Double Issue*

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School Finance Equity: The Courts Intervene

A National Perspective

by David L. Franklin and G. Alan Hickrod, Illinois State University

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Editor's Note: *Due to the importance of school finance equity, this Policy Brief is a special double issue. "Viewpoints" of state legislators are also included from their individual state perspective.*

Policy Briefs are reports on the status of current issues in education from a national perspective, descriptions of actions and agendas in the NCREL region, commentaries by experts from their particular point of view, and resources for further information.

EA 022 358

Various state systems of financing public education have been called many things...inequitable, inadequate, inefficient, and other terms best left unprinted. While the popular media may give the impression that calling such systems "unconstitutional" is a relatively new phenomenon, this label has a history of over three-quarters of a century as a legal claim.

In 1912, the Supreme Court of Maine upheld a school finance system which provided state aid amounting to one-third of the per-pupil expenditures in public schools and local taxable resources providing two-thirds of such expenditures.[1] Although this system was recognized as benefitting property-rich school districts more than property-poor districts, the system was found to be in compliance with the Maine Constitution.

Skipping roughly 60 years of unsuccessful challenges to state school finance systems, the "modern" era of litigation in this area was launched with Serrano in 1971.[2] Serrano argued that the California school finance system violated not only the education article and equal protection clause of the California Constitution, but also violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Before this case could progress through the California court system, the U.S. Supreme Court, in a 5-to-4 decision in Rodriquez, ruled that, although education may be the most important function of state government, it was not a "fundamental right" under the U.S. Constitution and not, therefore, subject to Equal Protection guarantees.[3] For all practical purposes, this decision closed the doors of federal courts to further litigation on this issue and shifted the litigation forum to state judicial systems.

The parent-taxpayer plaintiffs in Serrano persisted, however, and eventually succeeded in the California Supreme Court based on the state constitution claim.[4] This court found that education was a "fundamental interest" under the California Constitution and, therefore, subject to the Equal Protection guarantees. Under this challenged system, revenue raised by taxing local school district property accounted for more than 55 percent of the available funds to support public schools.

The distribution of taxable property was not, however, equal among California school districts, i.e., a range as low as $103 of assessed valuation per pupil to a high of $952,156 (or a ratio of nearly 1-to-10,000) in elementary districts was found to be inequitable. The court basically ruled that the state must fund its public schools in a manner that was fiscally based on the wealth of the state rather than the wealth of individual school districts.

Since the first Serrano decision, 26 states have experienced legal challenges to their school finance systems at the appellate court level. Each of these state court cases basically represents the "Serrano situation," i.e., the wealth available to support the education of public school students was highly dependent on the student's residency and not on the wealth of the state as a whole. As these cases have been pressed by plaintiff-challengers, two fundamental questions have evolved for courts to consider. First and foremost, "Is education a fundamental right/interest mandated by the education clause of the state constitution?" Second, "Does or how does the equal protection clause have an impact on the education clause?"

There are 14 states (Table 1) in which the "Serrano-situation" judicial challenges in state courts resulted in school finance systems being upheld as constitutional and 12 states which have found such systems to be unconstitutional.[5,6] The specific language of state education clauses does not significantly differ. The significant difference is to be found in the court's application of the equal protection

clause to the education clause. In the 14 cases upholding school finance systems as being constitutional, the courts have found that education was not a fundamental right in a similar vein as decided in Rodriquez. Without the fundamental right constitutional status, the courts, in applying a state's equal protection clause, adopted a "minimal standard" or "rational relationship" level of judicial analysis. In this analysis, the court considers whether a school finance system is reasonably related to a legitimate state interest or purpose or is reasonable and not arbitrary. As a general finding in these cases, the courts viewed the state-created school finance system, with a heavy reliance on local district wealth to determine the fiscal resources per pupil, as rationally and reasonably related to the state's interest in maintaining local control of public school districts.

In 12 cases (Table 2), the state courts viewed the language or intent of the education clause as establishing education as a fundamental right subject to equal protection guarantees. In the first eight cases the courts applied a "strict scrutiny" test of equal protection. This test requires the state to defend its school finance scheme by showing that the system is justified by a compelling state interest rather than a simple reasonable interest. In this analysis the state bears the burden of proof to show that a fiscally inequitable system is constitutional due to a compelling state interest in retaining such a system. None of these eight school finance system cases were found to be defensible as supporting a compelling state interest and were ruled unconstitutional.

In the three 1989 cases, Montana, Kentucky, and Texas, the minimal standard v. the strict scrutiny test of equal protection was bypassed by each state's supreme court finding that the language of the respective education clauses, and the intent of the framers of the constitutions containing these clauses, unequivocally established education as a fundamental right. As such, the inequities in the school finance system in Montana were found to violate a fundamental right,[7] the inadequate funding system in Kentucky was found to violate a fundamental right,[8] and the inefficient funding system in Texas was found to violate a fundamental right.9

While each of the 26 state-level challenges have demonstrated varying degrees of school funding inequities, with the fiscal resources available to support a public school student's educational program being highly dependent on the taxable wealth of the student's district of residency, the Kentucky and Texas decisions incorporated the adequacy and efficiency issues of school finance. With respect to the issue of efficiency, the majority opinion in the Kentucky Supreme Court decision bluntly stated: "... it is crystal clear that the General Assembly has fallen short of its duty to enact legislation to provide for an efficient system of common schools throughout the state. In a word, the present system of common schools in Kentucky is not an 'efficient' one..."10

This court identified nine "essential" characteristics of an efficient system of common schools as guidance for the Kentucky General Assembly in its attempt to design a constitutional system. Three of these nine were school finance related and indicated that equal educational opportunities must be provided to all children regardless of their place of residence or economic circumstances; that all children have a constitutional right to an adequate education; and that the General Assembly is responsible for providing school funding sufficient to provide each child with an adequate education. This court also stipulated, with regard to the adequacy of school funding, that the children of the poor and of the rich, the children who live in property-poor and in property-rich schools districts, must be given the same opportunity and access to an adequate education.

In a unanimous Texas decision, the Supreme Court, recognizing that the legislature was "duty-bound" to provide for an efficient system of education, specified that school districts, regardless of the taxable property wealth located in a district, must have "substantially equal access" to similar revenue per pupil at similar levels of tax effort. As stated by this court:

"The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered the student. High-wealth districts are able to provide for their students' broader educational experiences including more extensive curricula, more up-to-date technological equipment, better libraries and library personnel, teacher aides, counseling services, lower student-teacher ratios, better facilities, parental involvement programs, and drop-out prevention programs. They are also better able to attract and retain experienced teachers and administrators."11

While specific degrees of fiscal inequities, inadequacies, and/or inefficiencies may be found in the evidence introduced in these cases from 26 states, four criteria emerge that illustrate what must be achieved in order to successfully challenge a state school finance system. These probable criteria are:

1. Education must be concluded by a state court to be a fundamental right or interest guaranteed by a state constitution.

2. The education clause must require qualitative demands and affirmative duty by a state legislature.

3. The strict scrutiny level of analysis must be used by the state court in applying the equal protection clause to the education clause.

4. The general funding system in the state, or at least in the plaintiff's school district(s), must be found to be inequitable, inadequate, and/or inefficient.

It should also be recognized that this national perspective on court intervention in state school finance systems may not be the "final word" on this topic. Litigation currently is pending or in progress in Alaska, Connecticut, Indiana, Minnesota, New Jersey, North Dakota, Oregon, Tennessee, and suits are being considered in Alabama, Illinois, and South Dakota. From what is known of the issues involved in these states, it appears that the fundamental argument has not changed that the financial resources available to support a student's education in a public school district should not depend on a student's residency. ■

1 *Sawyer v. Gilmore, 87 Atl. 673, (1912).*

2 *Serrano v. Priest*, 487 P.2d 1241 (1971).

3 *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 93 S.Ct. 1278, *rehearing denied*, 411 U.S. 959, 93 S.Ct. 1919 (1973).

4 *Serrano v. Priest*, 557 P.2d 929 (1976), cert. den. 432 U.S. 907, 97 S.Ct. 2951 (1977).

5 AZ: *Stofstall v. Hollins*, 515 P.2d 590 (1973); MI: *Milliken v. Green* 212 N.W.2d 711 (1973); ID: *Thompson v. Engelking*, 537 P.2d 635 (1975); OR: *Olsen v. State of Oregon* 554 P.2d 139 (1976); PA: *Danson v. Casey*, 399 A.2d 360 (1979) and *Ben Salem Township School District v. Commonwealth of Pennsylvania*, 524 A.2d 1027 (1987); OH: *Board of Education of the City of Cincinnati v. Walter*, 390 N.E.2d 813 (1979), *cert. den.*, 444 U.S. 1015, 100 S.Ct. 665 (1980); GA: *McDaniels v. Thomas*, 285 S.E.2d 156 (1981); CO: *Lujan v. Colorado State Board of Education*, 649 P.2d 1005 (1982); NY: *Board of Education, Levittown Union Free School District v. Nyquist*, 408 N.Y.S.2d 606 (1978) and *Domain v. Carey*, 519 N.Y.S.2d 17 (1987); MD: *Hornbeck v. Somerset County Board of Education*, 458 A.2d 758 (1983), OK: *Fair School Finance Council of Oklahoma v. State of Oklahoma*, 746 P.2d 1135 (1987); NC: *Britt v. North Carolina State Board of Education*, 357 S.E.2d 432, (1987); LA: *School Board of the Parish of Livingston v. Louisiana State Board of Elementary and Secondary Education*, 830 F. 2d 563 (1987), *cert. den*, 108 S.Ct. 2884 (1988); SC: *Richland County v. Campbell*, 364 S.E. 2d 470 (1988).

6 NJ: *Robinson v. Cahill*, 303 A.2d 273, cert. den., 414 U.S. 976, 94 S.Ct. 292 (1973); KS: *Knowles v. State Board of Education*, 547 P.2d 699 (1976); WI: *Buse v. Smith*, 247 N.W. 2d 141 (1976), and *Kukor v. Grover*, 436 N.W. 2d 568 (1989); CA: *Serrano v. Priest*, 487 P.2d 1241 (1971) and *Serrano v. Priest*, 557 P.2d 929 (1976), *cert. den.*, 432 U.S. 907, 97 S.Ct. 2951 (1977) and *Serrano v. Priest*, 226 Cal. Rptr. 584 (1986); CT: *Horton v. Meskill*, 376 A.2d 359 (1977); WA: *Seattle School District No. 1 v. State of Washington*, 585 P.2d 71 (1978); WV: *Pauley v. Kelly*, 255 S.E.2d 859 (1979) and *State ex rel. Board of Education for the County of Grant v. Manchin*, 366 S.E. 2nd 743 (1988); WY: *Washakie County School District No. One v. Herschler*, 606 P.2d 310, *cert. den. sub. nom*, Hot Springs *County School District No. One v. Washakie County School District No. One*, 449 U.S. 824, 101 S.Ct. 86 (1980); AR: *DuPree v. Alma School District No. 30*, 651 S.W. 2d 90 (1983); MT: *Helena Elementary School District No. 1 v. State of Montana*, 769 P.2d 684 (1989); KY: *Rose et. al. v. The Council for Better Education, Inc.*, et. al. Supreme Court of Kentucky, June 8, 1989; TX: *Edgewood Independent School District v. Kirby*, 777 S.W. 2d 391 (1989).

7 *Helena Elementary School District No. 1 v. State of Montana*, 769 P.2d 684 (1989).

8 *Rose et. al. v. The Council for Better Education, Inc.*, et. al., Supreme Court of Kentucky, June 8, 1989.

9 *Edgewood Independent School District v. Kirby*, 777 S.W. 2d 391 (1989).

10 *Rose* et. al., at p.2.

11 *Kirby* 777 S.W. 2d at 393.

David L. Franklin is a professor of educational administration. He is a noted authority on school law and an administrative law judge.

G. Alan Hickrod is a distinguished professor of educational administration and foundations, Director of the Center for the Study of Educational Finance, Past President of the American Education Finance Association, and President of the Coalition for Educational Rights under the Constitution.

Reports Available This Fall

- Funding Early Childhood Education
- Funding Interventions for Students At Risk
- Fiscal Implications of School Choice

To support the states in the region as they address school finance issues, NCREL sponsored a School Finance Study Group during 1989-90. The group, composed of members from each of the region's seven State Education Agencies, developed three studies, each focused on the financial aspects of one programmatic issue: early childhood education, students at-risk, and school choice. Each study includes a detailed assessment of the issues, information on program funding in each of the seven states, commentaries written by scholars and policy experts in the field. These reports will be available from NCREL in the fall of 1990.

Table 1 - STATE SCHOOL FINANCE SYSTEMS UPHELD IN JUDICIAL ACTIONS

Equal State	Original Case Name	State Education Clause	Protection Test
New York	Board of Education v. Nyquist (1982) and (1987)	"The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the state may be educated."	Minimal standard
Maryland	Hornbeck v. Somerset County Board of Education (1983)	"The General Assembly...shall by Law establish throughout the state a thorough and efficient system of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance."	Minimal standard
Oklahoma	Fair School v. State (1987)	"Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all children of the state..."	Minimal standard
North Carolina	Britt v. State Board (1987)	"The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right. The General Assembly shall provide a general and uniform system of free public schools...wherein equal opportunity shall be provided for all students."	Minimal standard
Louisiana	School Board v. Louisiana State Board (1987) and (1988)	"The legislature shall appropriate funds sufficient to insure a minimum foundation program of education...The funds appropriated shall be equitably allocated...by the State Board...and approved by the legislature prior to making the appropriation."	Minimal standard
South Carolina	Richland v. Campbell (1988)	"The General Assembly shall provide for the maintenance and support of a system of free public schools..."	Minimal standard

Plus Repeat Litigation Upholding Systems in California (1986) and Wisconsin, (1989).

Table 1 - STATE SCHOOL FINANCE SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Arizona	Shofstall v. Hollins (1973)	"The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year..."	Minimal standard
Michigan	Milliken v. Green (1973)	"The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law..."	Minimal standard
Idaho	Thompson v. Engleking (1975)	"It shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public free common schools."	Minimal standard
Oregon	Olsen v. Oregon (1979)	"The Legislature Assembly shall provide by law for the establishment of a uniform and system of common schools.	Minimal standard
Pennsylvania	Danson v. Casey (1979) and (1987)	"The General Assembly shall provide for the maintenance of a thorough and efficient system of public education to serve the needs of the Commonwealth"	Minimal standard
Ohio	Board of Education v. Walter (1979)	"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state..."	Minimal standard
Georgia	Thomas V. McDaniels (1981)	"The provision of an adequate education for the citizens shall be a primary obligation of the state of Georgia, the expense of which shall be provided by taxation."	Minimal standard
Colorado	Lujan v. State Board of Education (1982)	"The General Assembly shall as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state."	Minimal standard

Table 2
STATE SCHOOL FINANCE SYSTEMS OVERTURNED IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
New Jersey	Robinson v. Cahill (1973)	"The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools..."	Strict scrutiny
Kansas	Knowles v. State Board of Education (1976)	"The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools..."	Strict scrutiny
Wisconsin	Buse v. Smith (1976)	"The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition for all children between the ages of four and twenty year..."	Strict scrutiny
	Note: Upheld in Kukor v. Grover (1989).		
California	Serrano v. Priest (1971) and (1977)	"The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year..."	Strict scrutiny
	Note: Upheld in Serrano v. Priest (1986)		
Connecticut	Horton v. Meskill (1977)	"There shall always be free public elementary and secondary schools in the state."	Strict scrutiny
Washington	Seattle School District No. 2 of King County v. State (1978)	"The legislature shall provide for a general and uniform system of public schools."	Strict scrutiny
West Virginia	Pauley v. Kelly (1979) and (1988)	"The legislature shall provide by general law, for a thorough and efficient system of free schools."	Strict scrutiny
Wyoming	Washakie County School District No. 1 v. Herschler (1980)	"The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kindergarten and grade..."	Strict scrutiny

Table 2
STATE SCHOOL FINANCE SYSTEMS OVERTURNED IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Arkansas	Dupree v. Alma School District No. 30 (1983)	"Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law and no other interpretation shall be given to it."	Rational relationship
Montana	Helena School District v. State (1989)	"...goal...a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person in the state...The legislature shall provide a basic system of free quality public elementary and secondary schools...It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system."	None (Constitutional language & history of Education Article)
Kentucky	Rose v. The Council (1989)	"The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state."	None (Constitutional language & history of Education Article)
Texas	Edgewood v. Kirby (1989)	"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."	None (Constitutional language & history of Education Article)

Regional Action & Agendas

Illinois

It is commonly believed that the variation in expenditures per pupil is too great in Illinois. An independent group, The Coalition for Educational Rights Under the Constitution, was recently formed and is considering filing suit against the state claiming that the education article of the Illinois Constitution is being violated. (See Guest Commentary.)

Legislation

Senate Amendment 1 to House Bill 602 (Maitland, 1989) is the only legislation which attempts to reform the method by which Illinois funds its public schools. It would provide property tax relief, restructure the state aid formula, and provide supplemental state funds for local education agencies (LEAs).

Future

The Illinois General Assembly is expected to address the issue of school funding in the spring of 1991 when the temporary state income tax increase is scheduled to end.

Indiana

Approximately 50 school districts, comprising 16 percent of the state's 300 public school corporations, have joined Lake Central School Corporation in challenging the state's school funding formula. Preliminary filings in response to the suit have been made by the Attorney General.

Legislation

A school finance task force representing a broad cross section of practitioners and finance experts is addressing the equity issue and other finance concerns. No action is expected until 1991.

Future

Next steps depend on task force recommendations due in late summer, 1990. A new formula is being developed to address many equity issues.

Iowa

The 1989 General Assembly passed legislation to revise the current formula for funding school districts in Iowa. The new finance law will be implemented for the 1991-92 school year and continues to fund districts on a per pupil basis. Major changes include bringing the district cost per pupil within ten percent of the state cost per pupil the first year and moving toward five percent in future years. Local boards will have the authority to increase their budgets beyond a historical approach of controlled funding. Districts experiencing enrollment declines will continue to receive an adjustment to compensate for the enrollment decline.

Legislation

In the 1990 legislative session only technical corrections to the legislation are expected. However, the funding of Area Education Agencies (AEAs) will be addressed. Currently, these are funded on a stand alone, per pupil basis. It is proposed that the AEA media and educational services funding should be a percent of the state cost per-pupil times their enrollment.

Future

Major future steps will be the completion of the studies and proposed legislation on financing special education instruction and special education support services through the AEAs. An area of growing concern is facility needs with respect to maintenance, replacement, or adding new buildings to meet needs. The state does not participate in supporting or equalizing the school house fund.

Michigan

In 1984 the Michigan Appeals Court held that the Michigan Constitution did not require the Legislature to provide equal financial support to local schools and rejected the claim by the plaintiffs in East Jackson v. State of Michigan that education is a fundamental right under the Michigan Constitution. Proposals are now surfacing to address equity in funding for K-12 education.

Legislation

SJR "O" and HJR "S" have been introduced in the Michigan Legislature. These proposals, if enacted by the Legislature and approved at a statewide election, would require the Legislature to fund public K-12 education on an equitable basis. The resolutions also would give boards of education constitutional status and add gender to the antidiscrimination provisions already in the Constitution. Existing provisions include race, color, religion, creed, and national origin.

Future

These resolutions may be discussed by the Michigan Legislature, and consideration also will be given to earmarking a certain percentage of the state budget to education.

Minnesota

Minnesota has a long history of high and equalized funding, although 52 districts are suing the state over the unequalized referendum portion of operating and debt service levies.

Legislation

The spring interim legislative session focused on cutting spending to balance the budget, but school districts were almost entirely exempted. Additions were made to funding for early childhood and drug prevention, and an innovative pilot program was instituted with the St. Paul district to provide early intervention to lessen the need to classify students as handicapped. Alternative teacher licensure was made possible, and the state was provided with veto power over school building construction.

Future

Funding for the 1991-93 biennium will depend on revenue projections, with many lawmakers calling for restructuring to accompany any increased funding.

Ohio

Litigation is being considered by some school districts. General Assembly has instituted a special joint (House-Senate) committee to examine school funding issues.

Legislation

No legislation is being considered. The next budget session begins January, 1991.

Future

A joint committee of the General Assembly is due to make a report in summer, 1990. State Board of Education legislative recommendations are to be presented in fall, 1990.

Wisconsin

The most recent challenge to the school finance system (Kukor v. Grover) was set aside in 1989. No other lawsuits have been filed as of this date.

Legislation

Recent legislation has both added additional funding and equity to the general equalization aid formula and expanded a program of minimum (flat) aid for the most property-wealthy districts. There has been no attempt to address major school finance reform.

Future

During 1990 a study of the entire system of K-12 education will be conducted by the Governor's Commission on Schools for the 21st Century.

Guest Commentary

by Robert Leininger, Illinois State Superintendent of Education

Successful litigation in Kentucky (Rose v. The Council for Better Education) and Texas (Edgewood v. Kirby), in which state school finance systems were found unconstitutional, has spurred the interest of educators and political leaders in Illinois. Many Illinois school districts have shown interest in joining The Coalition for Educational Rights Under the Constitution, a newly formed group considering a lawsuit in the hopes of overturning the present system of school finance.

Illinois, not unlike many other states, relies primarily on the local property tax to finance its system of public schools. This reliance has contributed significantly to the wide disparity in expenditures per-pupil, ranging currently from a high of approximately $12,800 to a low of just over $2,000. Recent trends in school district assessed valuation per pupil suggest that variation in expenditures will continue and in all probability grow. This expenditure variation (as in Kentucky and Texas) is the basis for the proposed litigation in Illinois.

In the event of a lawsuit we must remember that Illinois' system of financing its public schools is constitutional until the Supreme Court rules otherwise. In both Kentucky and Texas, the Court found that the system of finance was not "efficient," as specified in their respective constitutions. The Supreme Courts of Kentucky and Texas had to decide and rule on the intent of the framers of the constitutions of those states as to what the term "efficient" really meant.

The Constitution of Illinois also specifies that "the State shall provide for an efficient system of high quality public educational institutions and services." Unlike Kentucky and Texas, the Illinois Supreme Court will have available the transcripts of the recent 1969 Constitutional Convention from which to determine the intent of the composers of Article 10 of the Constitution of Illinois.

The courts are one avenue to the resolution of the problem of school finance inequity in Illinois, but they should not be considered the only avenue. While litigation may serve as an important catalyst in bringing change, there are risks involved in seeking a judicial solution. A lawsuit may take years to wind its way through the judicial system; and, if successful, more years may pass before an equitable system is implemented. Finally, the determination of the funding system could be mandated by the judiciary, bypassing the voices of the education community, the public, and the legislature.

We must all come together with a strong, unified voice if progress on the school funding issue is to be made. We must continue to work to clarify the issues, and then work with members of the General Assembly and the Governor to put in place a system of school finance which will reduce the disparity in expenditures and fairly distribute the resources of the state among its schools.

While equity and equality of educational opportunity are important issues, the concept of adequacy is equally important. It is an absolute necessity that school districts have enough money with which to operate adequate educational programs.

The Illinois General Assembly recently enacted a temporary state income tax increase which is scheduled to expire in June 1991. The temporary tax increase did raise the state's FY90 support some 9 percent to $3 billion. However, the increase was only about 3 percent of the total $8 billion spent on elementary and secondary education from state, local and federal sources. In return for increased funding for schools, legislators want to know what the additional dollars are buying. Accountability is an important issue. People have a right to know how their tax dollars are being spent.

Not all new state funding could be directed at improved curriculum, improved attendance, smaller class sizes or higher test scores. The increased funding in many school districts had to be used just for survival, e.g., reducing school district debt, reinstating teacher positions, and meeting salary needs.

Only after sufficient resources are made available and fairly distributed can we begin to truly judge the equality of educational opportunity afforded each child in the state. Only then can we begin to discern the real differences among the educational programs of Illinois school districts. Only then can we begin to hold schools accountable and measure them by what they do, what they accomplish, and how they improve. ■

Robert Leininger is the fourth State Superintendent appointed by the Illinois State Board of Education. He has 35 years experience as an Illinois educator. The finance equity issue has been his number one topic since his appointment.

Viewpoints

What are the problems with the current

funding structure or formula?

Art Ollie, Chair, Iowa House Education Committee, 413 Ruth Place, Clinton, Iowa 52732:

"Many schools are still struggling for sufficient resources to develop excellent quality programs. Also many schools have special problems, both rural and urban, for which 'equal funding' actually results in unequitable funding. Other than allowing 'local option taxes' we have no good way to adjust to differential needs."

Gene Hoffman, Illinois House of Representatives, 120 Robert Palmer Drive, Elmhurst, IL 60126:

"a. The concept of establishing and then funding a minimum program works backwards. Rather than determining an acceptable minimum funding level and then appropriating to that level, an acceptable appropriation level is determined, and that appropriation level determines the minimum program that can be funded.

b. The Equalized Assessed Valuation data used is a year old, which is not the fault of the formula.

c. It doesn't take into account the varying cost of providing the same service in different parts of the state. We have no 'cost of education' factor in the formula.

d. It doesn't yield an equitable education program for all pupils.

e. It is subject to tinkering by the legislature, which is not the fault of the formula."

Arthur, L. Berman, Illinois State Senate, State House, Room 605E, Springfield, IL 62706:

"With limited state resources, it has allowed property-rich school distrcits provide good education, while property-poor districts are unable to do so."

Charlie Weaver, Minnesota House of Representatives, 241 State Office Building, St. Paul, MN 55155:

"The current formula does not provide an adequate base of funding per pupil. As a result, districts are forced to a levy referendum to raise additional money. This referendum is inherently inequitable since districts with low property wealth must have a greater levy to raise the same amount as a district with higher property wealth."

Ken Nelson, Minnesota House of Representatives, 367 State Office Building, St. Paul, MN 55155:

"I think there are two major areas in the Minnesota funding formulas that need to be addressed. Funding to build school facilities is almost totally dependent on local property taxes. The 1990 legislature required inspections of school facilities once every three years by the state fire inspector working in conjunction with the department of education. There is no doubt that these inspections will lead to the need to replace or extensively remodel some facilities. The state needs to participate more in funding for facilities. Minnesota school districts are able to increase their levy above the amount permitted in law by passing a referendum in the district. This provision has been justified as allowing local districts to increase program offerings if they choose. However, the range of dollars available from this referendum levy is becoming substantial and seems to be somewhat dependent on the property wealth of the district."

12

What are the good points about the current funding structure or formula?

Art Ollie, Chair, Iowa House Education Committee, 413 Ruth Place, Clinton, Iowa 52732:

"The new formula provides more money overall and is more equitable on a per pupil basis."

Ken Nelson, Minnesota House of Representatives, 367 State Office Building, St. Paul, MN 55155:

"Our general education formula is equitable and compensates for differences in district property wealth. Because of changes made in 1987, differences in revenue per pupil unit have decreased. The formula includes components to acknowledge cost differences because of sparsity, high teacher training and experience, and high concentrations of students coming from poverty situations. The capital expenditure equipment and facilities formulas are now fully equalized."

Charlie Weaver, Minnesota House of Representatives, 241 State Office Building, St. Paul, MN 55155:

"The current formula does recognize certain inherent costs that some districts must incur, such as those resulting from a high percentage of AFDC families or sparcity of population. Additionally, the general education allowance is equalized to recognize differences in property wealth."

Gene Hoffman, Illinois House of Representatives, 120 Robert Palmer Drive, Elmhurst, IL 60126:

"a. It requires a local effort to qualify for state support.

b. It recognizes the difference in the cost of educating pupils at the elementary, junior high, and high school levels.

c. There are weights for pupils from economically deprived backgrounds.

d. It guarantees that all pupils will receive some financial support from the state.

e. It is easily revised to reflect the desire and mood, of the General Assembly.

f. No one has come forward with anything better."

Arthur, L. Berman, Illinois State Senate, State House, Room 605E, Springfield, IL 62706:

"It recognizes and encourages local initiative and, with adequate state resources, could be the basis for a much more equitable system."

References and Resources

Belsches-Simmons, G. (1983). School finance litigation. In School finance reform in the states: 1983 (Report No. F83-1, pp. 31-40). Denver, CO: Education Finance Center of Education Commission of the States.

Camp, W.E, & Thompson, D.C. (1988). School finance reform: Legal issues and politics of reform. Journal of Education Finance, 14, 221-238.

Connelly, M. J. & McGee, J. (1987). School finance litigation in the 1980s. Journal of Education Finance, 12, 578-591.

Franklin, D.L., Hickrod, G.A., Wortham, M.A., Ward, J.G., Chaudari, R.B., Lenz, R.J., & Hubbard, B.C. (1987). The constitutionality of the K-12 funding system in Illinois—volume I: Legal issues (MacArthur/Spencer Series Number 3). Normal, IL: Illinois State University, Center for the Study of Educational Finance.

Hartman, W. (1988). District spending disparities: What do dollars buy? Journal of Education Finance, 13, 436-459.

Hickrod, G.A., Chandhari, R.B., Hubbard B.C., Polite, M.M., O'Connell, P.A., Gruyme, G.B., & Mogill, A.T. (1987). Documenting a disaster: Equity and adequacy in Illinois school finance,1973 through 1988. (MacArthur/Spencer Series Number 4) Normal, IL: Illinois State University, Center for the Study of Educational Finance.

Hickrod, G.A., Franklin, D.L., Hubbard, B.C., Hines, E.R., Polite, M.M., & Pruyme, G.B. (1989) Guilty governments: The problem of inadequate educational funding in Illinois and other states (MacArthur/Spencer Series Number 8). Normal, IL: Illinois State University, Center for the Study of Educational Finance.

Judicial control of the purse—school finance litigation in state courts. (1982, Spring). Wayne Law Review, 28, 1393-1425.

Kearney, C.P. & Chen, L. (1989). Measuring equity in Michigan school finance. Journal of Education Finance, 14, 319-367.

LaMorte, M.W. (1989). Courts continue to address wealth disparity issues. Educational Evaluation and Policy Analysis, 11, 3-15.

Rossmiller, R.A. (1987). Achieving equity and effectiveness in schooling. Journal of Education Finance, 12, 561-577.

Tack, L. (1989). Public school finance in Iowa. Des Moines, IA: Iowa Department of Education, Division of Planning and Accountability.

Wagar, L. (1989, August). When education isn't equal. State Government News, pp. 6-9.

Ward, J.G. (1987). In pursuit of equity and adequacy: Reforming school finance in Illinois. Journal of Education Finance, 12, 107-120.

Ward, J.G. (1987). Remedies in school finance equity litigation. West's Education Law Reporter, 36, 1-6.

Wise, A.E. & Gendler, T. (1989). Rich schools, poor schools: The persistence of unequal education. The College Board Review, 151, 12-17, 36-37.

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